

NOTARIAL CERTIFICATE  
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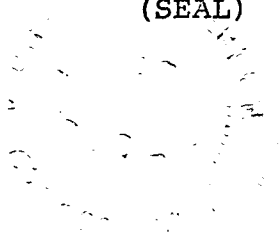
INTERSTATE COMMERCE COMMISSION

I, Michele Y. Verdun, do hereby certify that I am a Notary Public duly qualified in the County of Cook, State of Illinois.

I FURTHER CERTIFY that attached hereto is a copy of a Railroad Equipment Lease dated August 14, 1974, between Merchants Investment Co., the Lessor, and General Motors Corporation (Electro-Motive Division), the Lessee, and that I have compared the attached copy with the original document and that the copy is a true and correct copy in all respects.

IN WITNESS WHEREOF, I hereunto set my hand as a Notary Public, and have caused my notarial seal to be hereunto affixed this 29th day of October, 1974.

(SEAL)

  
Michele Y. Verdun  
Michele Y. Verdun  
Notary Public

My Commission Expires: February 11, 1978.

## RAILROAD EQUIPMENT LEASE

THIS RAILROAD EQUIPMENT LEASE, dated as of August 14, 1974, between Merchants Investment Co., an Illinois corporation (hereinafter referred to as "Lessor"), and General Motors Corporation (Electro-Motive Division), a Delaware corporation (hereinafter referred to as "Lessee");

### W I T N E S S E T H:

In consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the parties hereto covenant and agree as follows:

1. Procurement and Delivery of Cars. Lessor has procured and is in the process of modifying eight 70 ton flat type railroad cars (hereinafter referred to collectively as "Cars" and separately as "Car"), which are more fully described in Appendix A attached hereto. Lessor shall lease said Cars to Lessee, and Lessee shall hire the Cars from Lessor subject to the terms and conditions hereinafter set forth.

Lessor will cause the Cars to be delivered for acceptance on the private tracks of the Lessee at McCook, Illinois. Lessor shall use its best efforts to deliver the Cars at said location commencing on August 15, 1974, or such later date as may be mutually agreed upon by Lessor and Lessee. Lessor shall not, however, be liable to Lessee for any failure or delay in making delivery thereof due to cause or causes beyond Lessor's control. Lessee shall arrange to have present at the place of delivery of the Cars an authorized representative to accept delivery of each Car. Lessee will then inspect each Car, and if the Car tendered for delivery conforms to the specifications set forth in Appendix A, Lessee will accept delivery thereof and execute and deliver to Lessor a Certificate of Acceptance, substantially in the form of Appendix B attached hereto.

Lessee's execution and delivery to Lessor of the Certificate of Acceptance with respect to each Car shall conclusively establish that each Car, when accepted, is acceptable to and accepted by Lessee under this lease,

notwithstanding any defect with respect to design, manufacture, condition, or in any other respect, and that each Car, when accepted, is in good order and condition and appears to conform to the specifications thereto and all applicable Interstate Commerce Commission requirements and specifications, if any. Lessor represents that it has no knowledge of any such defect.

2. Rentals. Lessee agrees to pay to Lessor, in advance, as fixed rent for each Car the sum of \$175 per month, which payment specifically includes all applicable taxes on use or ownership of said Car. The first of said rental obligations shall accrue from the date of delivery and acceptance of the Car at the pro rata rate per day covering the number of days to the end of the month. All subsequent payments of rental shall be made on the first day of each succeeding month. The last payment of rental shall cover the number of days from the first day of the final month to the termination date of this Lease at the pro rata rate per day.

3. Mileage Payments. (a) Any mileage allowances, rentals and/or other compensation payable by railroads by reason of the use of the Cars (hereinafter referred to as "allowances") shall be collected by Lessor, and in connection therewith, Lessee agrees to report to Lessor movements of the Cars giving therein the date, destination and routing of the Cars together with all information which Lessee may receive from railroads or from any other source.

(b) Lessee agrees, insofar as possible, to so use the Cars that their total mileage under load will equal or exceed their mileage empty on each railroad over which the Cars move. In the event that the empty mileage of the Cars should exceed their loaded mileage on any railroad and Lessor is notified by such railroad to equalize such mileage with loaded mileage or to pay for such excess empty mileage, Lessee, after notice from Lessor, shall equalize such excess empty mileage within the time limit established by such railroad or pay Lessor for such excess at the rate established by the tariff of such railroad.

(c) Insofar as applicable laws and regulations permit, Lessee (unless an event of default specified in paragraph 17 hereof shall have occurred and be continuing) shall be entitled to all allowances collected by Lessor from railroads as a credit against fixed rents and any amounts that Lessee may be required to pay Lessor in

accordance with subparagraph 3(b) hereof but in no event shall such credit exceed the sum of such obligations.

(d) If the total allowances collected by Lessor from railroads during the term of this Lease by reason of the use of the Cars shall exceed an average of \$175 per Car for all of the Cars for each month from the effective date of this Lease to date on which such computation is made, such excess allowances shall be applied in the following order:

- (i) as a credit against any amounts that Lessee may then be required to pay Lessor in accordance with the provisions of subparagraph 3(b) hereof;
- (ii) as a refund to Lessee of any amounts that Lessee previously paid to Lessor in accordance with the provisions of subparagraph 3(b) hereof;
- (iii) as a refund to Lessee of any amount that Lessee previously paid Lessor because the allowances collected by Lessor from railroads in such period for use of the Cars were not sufficient to offset the fixed monthly rental for the Cars;
- (iv) as a credit against any current fixed rental payment due from Lessee under this Lease;
- (v) as a credit, through the balance of the term of this Lease, against any future payments that Lessee may be required to pay Lessor as fixed rental or in accordance with the provisions of subparagraph 3(b) hereof.

(e) All payments provided for in the Lease to the Lessor and the Lessee shall be made at the following addresses:

To the Lessor:

Merchants Investment Co.  
Suite 1202  
105 West Madison Street  
Chicago, Illinois 60602

To the Lessee:

Electro-Motive Division  
General Motors Corporation  
La Grange, Illinois 60525

or at such other addresses as either party shall have furnished to the other party pursuant to paragraph 21.

4. Fixtures and Modifications. Lessee shall have the right to install fixtures on or to the Cars and to otherwise modify the Cars for the transportation of products manufactured by Lessee and said installation or modification shall be in accordance with the rules and regulations of the Association of American Railroads and the Interstate Commerce Commission. The installation and maintenance of such fixtures and modifications which have been made subsequent to the date of this Lease shall be at the Lessee's own expense. The fixtures so installed shall be removed by the Lessee from the Cars at the termination of the Lease or any renewals thereof. If the Lessee has modified the Cars subsequent to the date of the Lease, the Lessee shall, at the option of the Lessor, return the Cars to their original condition prior to said modification upon the termination of the Lease or any renewals thereof.

5. Term of the Lease. The term of this Lease shall begin on the date on which the first Car is delivered to Lessee pursuant to paragraph 1 and shall continue for a period of eight years after the date of delivery of the last Car pursuant to paragraph 1 and for that additional period of months after said eighth year during which the Cars remain eligible for "interchange service" as that term is defined by the rules and regulations of the Association of American Railroads. Notwithstanding any of the foregoing, this Lease shall not continue for a period greater than nine years after the date of the delivery of the last Car pursuant to paragraph 1 except that this Lease shall automatically be extended for a period of five years if Lessee exercises its option under paragraph 6 hereof.

6. Renewal of Lease. Lessee shall have the option to renew this Lease on the same terms and conditions as provided for in this Lease for a period of five years at a fixed rent per month which is equal to the fair market rent for the Cars for in-plant service and not interchange service at the time of the Lessee's giving notice to the Lessor of its intent to renew this Lease. If Lessee desires to exercise this option it shall, at least 90 days before the expiration of the term of this Lease, give Lessor written notice of its election to so renew.

7. Title to the Equipment. The Lessor shall and hereby does retain full legal title to the Cars notwithstanding the delivery thereof to and the possession and use thereof by Lessee.

At all times during the continuance of this Lease, the Lessee will cause each Car to be kept numbered with the applicable unit number as set forth in Appendix A hereto which shall not be changed without the prior written consent of the Lessor. In case of such a change, the new number shall be set forth in a supplemental Appendix A to be executed by the Lessor and the Lessee.

In case, during the continuance of this agreement, any such unit number shall at any time be defaced or destroyed on any Car, the Lessee shall immediately cause the same to be restored or replaced. The Lessee shall not allow the name of any person, association or corporation to be placed on any Car as a designation, which might be interpreted as indicating a claim of ownership thereof by any person, association or corporation other than the Lessor, but, for the convenience of identification, the Cars may be lettered with the name, initials, or other insignia customarily used by Lessee, or its affiliates, on equipment of the same or similar type and Lessee may letter and/or paint the Cars in any manner not inconsistent with the other provisions of this paragraph. Lessee shall indemnify the Lessor against any liability, loss or expense incurred by Lessor as a result of the aforesaid marking of the Cars.

8. Disclaimer of Warranty as to Fitness or Merchantability of Cars. The Lessor makes no warranty or representation, either express or implied, as to the fitness or merchantability of the Cars, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee. Lessor hereby appoints and constitutes the Lessee, its agent and attorney-in-fact during the term of this Lease to assert, from time to time, in the name of and for the account of the Lessor and the Lessee, as their interests may appear, whatever claims and rights Lessor may have as owner of the Cars against Thrall and Lessor will assist Lessee in processing any such claims.

9. Indemnification Clause. During the term of this Lease, Lessee will indemnify and save Lessor harmless from any and all liabilities, damages, claims, suits, judgments and costs that may arise from the use or operation of the Cars with the exception of any latent defects of the Cars or any of Lessor's obligations under paragraph 10 of this Lease.

10. Maintenance. Except as otherwise provided in this Lease, Lessor is responsible for maintaining and repairing the Cars furnished hereunder in accordance with the requirements of railroad companies and the Code of Rules of the Interstate Commerce Commission and the rules and regulations of other Federal and State Authorities having jurisdiction. Lessor shall have no such responsibility until informed of the need for such maintenance or repair. Notwithstanding any of the foregoing, Lessee expressly assumes all costs of the maintenance of the decks of the Cars.

11. Loading of Cars. It is the duty of Lessee to know that Cars loaded hereunder are in proper condition for lading and shipment, except for those responsibilities which, under the law, have been assumed by the railroads. Lessee shall be liable for damage to any Car whether or not due to Lessee's negligence, if caused by the commodity loaded therein.

12. Rules, Laws and Regulations. Lessee shall comply with all applicable state, federal and local laws, regulations, requirements and rules, including those with respect to the registration, licensing, use, maintenance and operation of the Cars.

13. Use and Modification of Cars. The Lessee shall use the Cars only in the manner for which they were designed and intended and so as to subject them only to ordinary wear and tear. The Lessee shall not modify any Car, with the exception of modifications or any additions of fixtures made pursuant to paragraph 4 hereof, without the written authority and approval of the Lessor which shall not be unreasonably withheld. Any and all replacements of parts and modifications of the Cars, with the exception of any modifications or additions of fixtures made pursuant to paragraph 4 hereof, shall constitute accessions thereto and shall be subject to all of the terms and conditions of the Lease as though part of the original Car delivered hereunder.

14. Liens on the Cars. The Lessee shall pay or satisfy and discharge any and all liens or charges which may be levied against or imposed upon any Car as a result of acts of the Lessee; but the Lessee shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate legal proceedings, contest the validity thereof in any reasonable

manner which will not affect or endanger the title and interest of the Lessor to the Cars. Lessee's obligations under this paragraph 14 shall survive termination of the Lease.

15. Payment for Casualty Occurrence of Cars Unserviceable for Use. Responsibility for loss or destruction of, or damage to, Cars or parts thereof or appurtenances thereto furnished under this Lease shall be as fixed by the then prevailing Code of Rules Governing the Condition of, and Repairs to, Freight and Passenger Cars for the Interchange of Traffic, promulgated by the Association of American Railroads, and said Code of Rules shall establish the rights, obligations and liabilities of Lessor, Lessee, and any railroad subscribing to such Code of Rules and moving the Cars over its lines in respect of all matters to which said Code of Rules relate. In the event that any Car is lost, damaged or destroyed while on the tracks of Lessee, or any private track, such repairs, renewals or replacements as may be necessary to replace the Car or to place it in good order and repair shall be at the sole cost and expense of Lessee. Lessor and Lessee agree to cooperate with and to assist each other in any reasonable manner requested, but without affecting their respective obligations under this paragraph, to establish proper claims against parties responsible for loss or destruction of or damage to the Cars.

If any Car suffers damage in an amount less than the Association of American Railroads' value of that Car, Lessor shall make that Car available for service within ninety days of the occurrence of the damage or be liable to Lessee for any damages Lessee may incur as a result of the unavailability of that Car for the period commencing on the ninetieth day after the occurrence of the damage. Lessor may mitigate such liability by furnishing to Lessee a Car of similar design suitable for the purposes for which the original Car was intended.

If a Car is totally destroyed or if the cost of repair of any damaged Car exceeds the American Association of Railroads' value of that Car, Lessee's obligation to pay rent for said Car in accordance with paragraph 2 hereof shall not terminate; however: (i) the rent for said damaged or destroyed Car shall be \$135 per month (a \$40 per month reduction being given to Lessee for taxes and the cost of maintenance), (ii) the obligation of Lessee to pay rent for said damaged or destroyed Car shall terminate on the eighth anniversary of the original delivery of said Car to Lessor in accordance with paragraph 1 hereof, and (iii) Lessor



will immediately pay to Lessee any monies paid to Lessor by any parties for the destruction of or damage to said damaged or destroyed Car. At the option of the Lessee, Lessee may at any time pay to Lessor in complete satisfaction of Lessee's remaining obligations to continue the payment of rentals for said damaged or destroyed Cars a sum of money equal to Lessee's total remaining rent obligations to Lessor for said damaged or destroyed Car discounted to its present value by an interest rate equal to the corporate base rate of interest charged by the Continental Illinois National Bank and Trust Company of Chicago, at the time of said payment by Lessee to Lessor, to said bank's largest and most credit-worthy commercial borrowers on ninety-day commercial loans.

16. Annual Reports and Inspection. Lessee agrees to furnish Lessor promptly, at Lessor's request, with complete and accurate information reasonably required for the efficient administration of this Lease.

Lessor or its assignee shall have the right, by its authorized representatives, to inspect the Cars, at the sole cost and expense of Lessor, at such times as shall be deemed necessary.

17. Return of Cars Upon Expiration of Term. Unless otherwise mutually agreed to by the parties, within 30 days of the expiration of the term of this Lease with respect to any Car, the Lessee will, at its own cost and expense, deliver possession of such Car to the Lessor at McCook, Illinois, and will store each such Car for a period not exceeding 45 days. During such storage period, the Lessee will permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of any such Car, to inspect the same.

18. Default. If (a) Lessee shall fail to carry out and perform any of its obligations under this Lease within 20 days after Lessor shall have demanded in writing performance thereof, or (b) if a petition in bankruptcy or for reorganization, or for a trustee or receiver is filed by or against Lessee and all of the obligations of Lessee under this Lease shall not have been duly assumed by the trustee or receiver appointed, if any, in such proceeding or otherwise given the same status as obligations assumed by the trustee or receiver within 30 days after the appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier, Lessor may take possession of the Cars and any accessions thereto wherever they may be found, and at the election of Lessor or its

assignee, as the case may be, either (i) declare the Lease terminated, in which event all rights and obligations of the parties hereunder shall cease except only the obligations of Lessee to pay accrued rentals to the date of retaking, or (ii) attempt to relet the Cars as agent of Lessee, apply the proceeds of such reletting first to the expenses that may be incurred in the retaking and delivery of the Cars to the new Lessee, then the payment of amounts due Lessor under this Lease, and Lessee shall remain liable for any sums remaining due after so applying the proceeds so realized and Lessee shall pay said deficit monthly as the same may accrue.

19. Assignment: Possession and Use. This Lease shall be assignable in whole or in part by Lessor without the consent of Lessee, but Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. Upon notice being given Lessee hereunder, the rights of such assignee to such payments as may be assigned, together with any other rights hereunder which can be and are so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of Lessor under this Lease or otherwise. Provided, however, if such assignment is not made to a national banking institution with assets in excess of \$20,000,000, Lessee may cancel this Lease on 30 days' notice to the Lessor and its known assigns.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Cars in accordance with the terms of this Lease; but, without the prior written consent of the Lessor, the Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in the Cars. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Cars, except in the ordinary course of business of the Lessee, including interchange and subleasing and except to the extent permitted by the provisions of the next succeeding paragraph hereof. No assignment, sublease or interchange entered into by Lessee hereunder shall relieve Lessee of any liability or obligations hereunder.

Nothing in this paragraph 19 shall be deemed to restrict the right of Lessee to assign or transfer its leasehold interest under this Lease in the Cars or possession of the Cars to any corporation (which shall have duly assumed the obligations hereunder of Lessee) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of Lessee as an entirety or substantially as an entirety.

20. Appointment of Agent. The Lessor shall have the right, at any time during the term of this Lease, to appoing a bank or trust company selected by it to act as agent or trustee for it hereunder.

21. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

If to the Lessor:	Merchants Investment Co. Suite 1202 105 West Madison Street Chicago, Illinois 60602
If to the Lessee:	Electro-Motive Division General Motors Corporation La Grange, Illinois 60525

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

22. Execution in Counterparts. This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterparts shall constitute but one and the same instrument.

23. Law Governing. This Lease shall be construed in accordance with the laws of Illinois; provided, however, that the parties shall be entitled to all rights conferred by any applicable federal statute, rule or regulation.

IN WITNESS WHEREOF, the parties hereto have executed this Lease, or in the case of corporate parties hereto have caused the same to be executed by their respective duly authorized officers and their corporate seals to be hereto affixed as of the day and year first above written.

(SEAL)

MERCHANTS INVESTMENT CO.

WITNESS:

/s/ Thomas D. Hicks  
Thomas D. Hicks,  
Vice President

By /s/ E. John Hicks, Jr.  
E. John Hicks, Jr.,  
President LESSOR

(SEAL)

ELECTRO MOTIVE DIVISION  
GENERAL MOTORS CORPORATION

WITNESS:

/s/ George E. Choplin

By /s/ J. S. Vollmer  
Director of  
Purchases LESSEE

DESCRIPTION OF CREX 1101 THROUGH 1108

(Formerly IHB 8007, 8008, 8046, 8052,  
8066, 8078, 8082, 8087)

Type -	Flat car
Capacity -	140,000 lbs.
Inside length -	53'6"
Inside width -	10'4"
Outside length -	53'6"
Outside width -	10'4"
Extreme width -	10'4"
Height from rail -	3'4"
Extreme height from rail -	5'2"

CERTIFICATE OF ACCEPTANCE

I, duly appointed inspector and authorized representative of General Motors Corporation (Electro-Motive Division) (hereafter Lessee), for the purposes of the agreement dated as of August 14, 1974, between Merchants Investment Co., as Lessor, and Lessee, do hereby certify that I have inspected, received, approved and accepted delivery, on behalf of Lessee and under said agreement, of the following Cars:

TYPE OF CAR:	70-ton flat type cars
PLACE ACCEPTED:	McCook, Illinois
DATE ACCEPTED:	September 13, 1974
NUMBER OF CARS:	Eight
NUMBERED:	CREX 1101 through 1108

I do further certify that the foregoing Cars appear to be in good order and condition, and appear to conform to the specifications applicable thereto.

The execution of this certificate will in no way relieve or decrease the responsibility of the manufacturer of the Cars for any warranties it has made, express or implied, with respect to the Cars.

/s/ George E. Choplin  
Inspector and Authorized  
Representative of General  
Motors Corporation (Electro-  
Motive Division)

ACKNOWLEDGMENT

STATE OF ILLINOIS       )  
                              )    SS.  
COUNTY OF COOK         )

On this 22nd day of August, 1974, before me personally appeared E. John Hicks, Jr., to me personally known, who being by me duly sworn, says that he is the President of Merchants Investment Co., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(SEAL)

/s/ Bernice T. Gregor  
\_\_\_\_\_  
Bernice T. Gregor  
Notary Public

My Commission Expires: November 30, 1977.

STATE OF ILLINOIS       )  
                              )    SS.  
COUNTY OF COOK         )

On this 1st day of October, 1974, before me personally appeared J. S. Vollmer, to me personally known, who being by me duly sworn, says that he is the Director of Purchases of General Motors Corporation (Electro-Motive Division), that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(SEAL)

/s/ Zula C. Clair  
\_\_\_\_\_  
Notary Public

My Commission Expires: July 11, 1976